

Housing and Property Chamber First-tier Tribunal for Scotland



Repairing Standard Enforcement Order Ordered by the First-tier Tribunal for Scotland (Housing and Property Chamber)

Chamber Ref: PRHP/RP/16/0361

Title no: GLA7091

Flat 2/2, 46, Landressy Place, Glasgow, G40 1HF ('The House')

The Parties:-

Zarina Ahmad residing at 8 Newmilns Garden, Kilmarnock, KA3 6FX ('the Landlord').

David Weir and Laurie Cowan residing at Flat 2/2, 46, Landressy Place, Glasgow, G40 1HF ('the Tenants').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Greig Adams (Ordinary Member).

NOTICE TO The said Zarina Ahmad

Whereas in terms of their decision dated 28th March 2017, the Tribunal determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order; the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Tribunal requires the Landlord to:-

1. Repair or replace the windows in the Property to render them wind and watertight.

2. Exhibit a valid and compliant Gas Safety Certificate and

3. Install:

3.1 One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.

3.2 One functioning smoke alarm in every circulation space, such as hallways and landings.

3.3 One heat alarm in every kitchen.

3.4 All alarms should be hardwired and interlinked and

3.5 One CO detector in every space containing a fixed combustion appliance.

The Tribunal orders that these works must be carried out and completed by 30th May 2017.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes and landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy agreement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of section 28(5) of the Act: IN WITNESS WHEREOF these presents typewritten on this and the preceding page are subscribed at Irvine on 28th March 2017 by Jacqui Taylor, chairperson of the Tribunal, in the presence of the witness Keirsten Byrne, 65, High Street, Irvine.

J Taylor

Signed..... Date 28th March 2017

Chairperson

K Byrne.....witness

Housing and Property Chamber

First-tier Tribunal for Scotland



Statement of decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 24 (1) of the Housing (Scotland) Act 2006.

Chamber Ref: PRHP/RP/16/0361

Title no: GLA7091

Flat 2/2, 46, Landressy Place, Glasgow, G40 1HF ('The House')

The Parties:-

Zarina Ahmad residing at 8 Newmilns Garden, Kilmarnock, KA3 6FX ('the Landlord').

David Weir and Laurie Cowan residing at Flat 2/2, 46, Landressy Place, Glasgow, G40 1HF ('the Tenants').

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprising: Jacqui Taylor (Legal Member) and Greig Adams (Ordinary Member).

Decision

The Tribunal, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the House, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. David Weir, one of the Tenants, applied to the Tribunal for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**
- 2. The application stated that he considered that the Landlord has failed to comply with her duty to ensure that the House meets the repairing standard. He advised that the House was not wind and watertight and in all other respects reasonably fit for human habitation; the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order; the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.**

In particular the application stated:-

2.1 The windows are old and rotten. Damp has grown around the windows and the window panes themselves are not secure. At least 2 windows cannot be opened due to age/ damage.

2.2 No Carbon monoxide Detector.

2.3 No heat alarms.

2.4 Floor under the bath is rotten.

2.5 Gas boiler has not be serviced since the lease was signed.

3. The Convenor of the Private Rented Housing Panel, having considered the application, comprising documents received between 21st November 2016 and 18th January 2017 referred the application under Section 22 (1) of the Act to a Tribunal.

4. On 3rd February 2017 the President of The Housing and Property Chamber served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord and the Tenants.

5. The Tribunal attended at the Property on 15th March 2017. The Landlord, her daughter Zahra Ali and the Tenants were present at the inspection.

The Property is a second floor flat in a modern four storey brick built development which dates from circa 1985.

The accommodation comprises two bedrooms, living room, study, kitchen and bathroom. The property has single glazed wooden framed windows throughout.

The Tribunal inspected the alleged defects and found:-

5.1 The windows are old and rotten. Damp has grown around the windows and the window panes themselves are not secure. At least 2 windows cannot be opened due to age/ damage.

The windows throughout the Property are the original single glazed wooden framed windows. The external decoration is in poor condition. The beading is loose in places. The putty is defective as sections are missing and where the putty is in place it is cracked and brittle with the result that water has entered the window frames. As a consequence of the defective window putty there is mould growth around the windows. The windows are not wind and water tight.

5.2 No Carbon monoxide Detector.

There was no carbon monoxide detector in the Property.

5.3 No heat alarms.

There are two battery operated smoke alarms in the lounge and hall of the Property. The Tenants advised that these had been installed by the fire service a number of years ago.

5.4 Floor under the bath is rotten.

The bath panel was still attached to the bath but there was a gap at the top. The surveyor member of the Tribunal was able to partially inspect the floor under the bath by using a borescope. He found some evidence of moisture but no evidence of rotten timbers. His inspection was limited as the bath panel had not been removed.

5.5 Gas boiler has not be serviced since the lease was signed.

There was no certification on the boiler indicating when it had last been serviced. The Tenants advised that the boiler had been installed four or five years ago.

Photographs were taken during the inspection and are attached as a Schedule to this report.

6. Following the inspection of the Property the Tribunal held a hearing at Wellington House, Wellington Street, Glasgow, G2 2XL.

The Landlord, Zahra Ali, the Landlord's daughter and the Tenants attended the hearing.

In respect of the matters in the application the parties advised as follows:

6.1 The windows are old and rotten. Damp has grown around the windows and the window panes themselves are not secure. At least 2 windows cannot be opened due to age/ damage.

The Landlord explained that her contractor had inspected the windows and he had advised that the windows could be repaired or replaced. Her contractor had told her that the Tenants would only provide access if the windows were replaced.

6.2 No Carbon monoxide Detector.

The Tenants explained that gas was installed in the Property just before the Commonwealth games in 2014. The Landlord advised that there is no carbon monoxide detector in the Property as she was not aware that gas had been installed. She agreed to have the carbon monoxide detector installed.

6.3 No heat alarms.

The Tenants explained that the Fire service had installed the two battery operated smoke alarms prior to 2007.

6.4 Floor under the bath is rotten.

The parties acknowledged that as the bath panel had not been removed from the side of the bath it was not possible for the Tribunal to carry out a proper inspection.

6.5 Gas boiler has not be serviced since the lease was signed.

The Tenants explained that they had had the boiler installed in April 2013 and the boiler had not been serviced since then. No Gas Safety Certificate has been provided. The Landlord again explained that she had not been aware that gas had been installed in the Property.

9. Summary of the issues

The Tribunal determined that as no access had been provided to view the floor boards underneath the bath no order could be made in relation to the alleged rotten floor underneath the bath.

Therefore the issues to be determined are:-

9.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Sections 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the condition of the windows results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

9.2 That the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

As no valid Gas Safety Certificate has been provided to the Tenant, whether the central heating boiler is in a reasonable state of repair and proper working order.

9.3 That the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1)(f) and (g) of The Housing (Scotland) Act 2006).

Whether the Property has satisfactory provision of smoke, heat and CO2 detectors.

10. Findings of fact

10.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1) (a) of The Housing (Scotland) Act 2006).

The Tribunal determined that defects in the windows described results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

10.2 That the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

The Tribunal determined that as the Landlord has not obtained a valid Gas Safety Certificate and as no evidence has been produced to the Tribunal to establish that the central heating boiler is in a reasonable state of repair and proper working order the Tribunal determined that the central heating boiler is not in a reasonable state of repair and proper working order.

9.3 That the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1)(f) and (g) of The Housing (Scotland) Act 2006).

The Committee acknowledged that the statutory guidance requires:

- One functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes.
- One functioning smoke alarm in every circulation space, such as hallways and landings.
- One heat alarm in every kitchen.
- All alarms should be interlinked.
- One CO detector in every space containing a fixed combustion appliance.

The Committee determined that the absence of the required smoke, heat and CO detectors results in the Property NOT having satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and also the Property does NOT have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Decision

10. The Tribunal accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(a), 13(1)(c), 13(1)(f) and 13(1)(g) of the Act, as stated.

11. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

12. The decision of the Tribunal was unanimous.

Appeal

13. A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

... **J Taylor** ...Chairperson

28th March 2017



1. Front Elevation overlooking Landressy Place, Edinburgh.



2. Living Room window soffit – mould growth to lining.



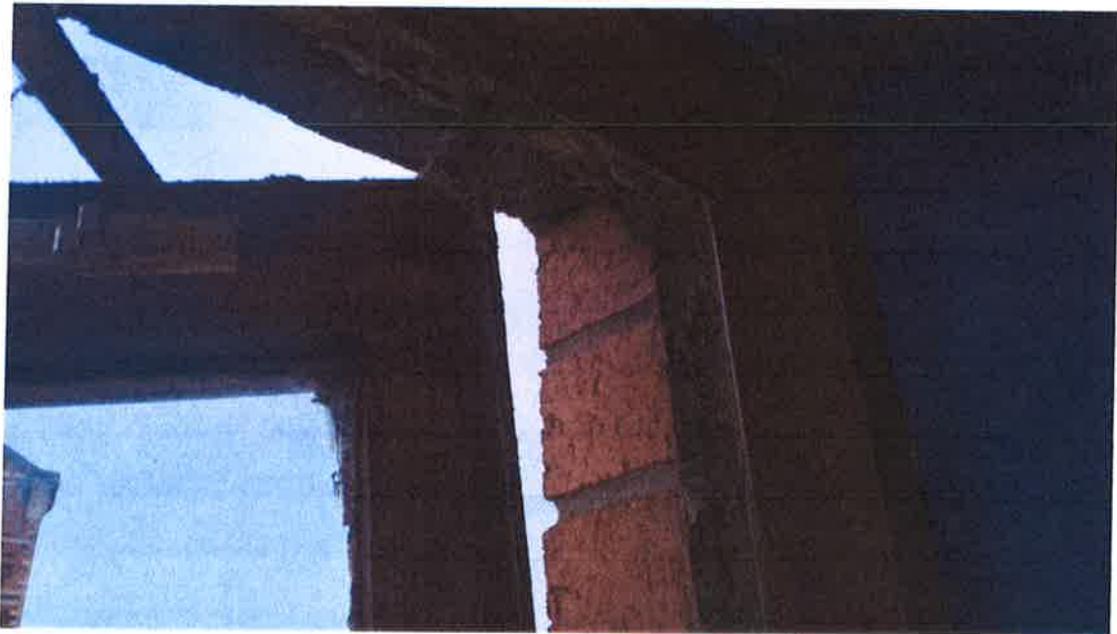
3. Living Room windows arrangement.



4. Close view of timber decay to window frame, defective glazing putties and water ingress at glazing seal.



5. Close view of defective glazing putties, water ingress at seal and timber decay to window frame.



6. Window casement hinge impairment – casement out of vertical alignment.



7. Window casement hinge not secured to window



8. Bathroom panel impeding inspection below bath.

Flat 2/2, 46, Landressy Place, Glasgow, G40 1HF



9. Gas boiler within Kitchen – no evidence of maintenance, servicing or a Gas Safety Certificate.



10. Gas Boiler – no evidence of any carbon monoxide detector within Kitchen.